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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,720

08/08/2006

Paul G. Van De Veen

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GREENBLUM & BERNSTEIN, P.L.C.
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EXAMINER

SHARMA, YASHITA

ART UNIT

PAPER NUMBER

3774

NOTIFICATION DATE

DELIVERY MODE

03/18/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
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Office Action Summary	Application No. 10/595,720	Applicant(s) VAN DE VEEN ET AL.	
	Examiner YASHITA SHARMA	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-34 is/are pending in the application.
- 4a) Of the above claim(s) 15, 18-21 and 25-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16, 17, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/08/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant timely traversed the restriction (election) requirement in the reply filed on 01/04/2010. Claims 15, 18-21 and 25-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Thus, claims 14, 16, 17, 22 and 23 are presently pending in this application.
2. Applicant's election with traverse of Group I, Species 2 in the reply filed on 01/04/2010 is acknowledged. The traversal is on the ground(s) that "Andrysek does not have a resistance device having an adjustable resistance. Instead, Andrysek shows a force transfer link 30 and force transfer link 34... does not have an adjustable resistance. Also, because the search for each Species would substantially be the same, applicants submit that no undue or serious burden would be presented in concurrently examining all of the Species." This is not found persuasive because the species indicated in the previous office action are mutually exclusive species with mutually exclusive characteristics that are not obvious variants of each other due to the knee prosthetic system having different resistance and locking mechanisms. The different mechanisms are not obvious variants of each other and therefore, require an extended search for all of the different components. Furthermore, Andrysek discloses a link 34 that has "adjustable resistance" since the link 34 has a seat 24a that abuts

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against the lower coupling element 24 and creates adjustable resistance by moving along the abutting surface of element 24 (Figs. 3 and 4).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 14, it is unclear to the examiner as to what is meant by "a lower part pivotably connected to the upper part via an articulation device," in Fig. 8 of Species 2. For the purpose of examination, the lower part is assumed to be connected indirectly to the upper part via the articulation device.

6. Regarding claim 16, it is unclear from the figures as to how the lower part freely extends on the system. The lower part is attached to the upper part and cylinder.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. **Claims 14, 16 17, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Henry et al. (5,904,721).**

9. Regarding claim 14, as best understood, Henry discloses a prosthetic knee joint, comprising: an upper part 1 (Fig. 1A) having a fastening device 2 (Fig. 1A) adapted for a receptacle for a leg stump; a lower part 8 (Fig. 1A) pivotably connected to the upper part via an articulation device 28 (Fig. 1A); and a resistance device (piston, 22; Fig. 1A) having adjustable resistance (col. 4, lin. 46-55) and configured to act as a lock (the piston's upper and lower limits in the pneumatic cylinder allow for the adjustable resistance of the device; Fig. 1A) which, via a mechanical control device (rod, 21; Fig. 1A) and as a function of an angle, blocks a flexion of the articulation device in a flexed position within a definable angle range (col. 4, lin. 46-55), wherein the lower part 8 (Fig. 1A) is freely pivotable in the flexion direction outside the definable angle range without action of the resistance device (the lower part 8 will continue to be pivotable outside of the maximum flexion angle if the resistance device or piston 22 did not stop the flexion).

10. Regarding claim 16, as best understood, Henry discloses the lower part 8 (Fig. 1A) is freely extended (the lower part 8 freely pivots about the upper part and the articulation device).

11. Regarding claim 17, Henry discloses the resistance device is configured to increase the resistance to the flexion to a locking action (the resistance device or piston 22 and compression spring 31 allow the stability of the flexion and locking when the piston is at it's flexed or the spring is at its compressed state), and the resistance device is configured such that it can be switched (valve 63 Figs. 4A and 4B; allows for the

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switching action of the resistance device because the opening and the closing of the valve allows for movement of air in different directions that provides extension and flexion of the system; claim 1).

12. Regarding claim 22, Henry discloses resistance device is a pneumatic unit (claim 1).

13. Regarding claim 23, Henry discloses the pneumatic unit has a controllable valve system 63 (Figs. 4A and 4B) which is arranged inside a piston 22 (Fig. 1A) guided in a cylinder (Fig. 1A) (claim 1).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YASHITA SHARMA whose telephone number is (571)270-5417. The examiner can normally be reached on Monday - Thursday, 8 am to 4 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/
Primary Examiner, Art Unit 3774
/Y. S./
Examiner, Art Unit 3774